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BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

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In the Matter of)

Direct Access to the INTELSAT System)

To: The Commission)

IB Docket No. 98-192

File No. 60-SAT-ISP-97

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JAN 29 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

REPLY COMMENTS OF LOCKHEED MARTIN CORPORATION

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Summary

Lockheed Martin believes that the most important question raised by this proceeding is not whether the Commission has statutory authority to implement Level 3 direct access, but whether allowing INTELSAT access to the U.S. market for international telecommunications services would have an unacceptable negative impact on the process of privatizing INTELSAT. Many of INTELSAT's customers and COMSAT's competitors alike have also noted the paramount importance of the prompt and procompetitive privatization of INTELSAT to the maintenance of a competitive international satellite industry.

Indeed, several satellite operators have expressed considerable unease at the concept of unconditioned U.S. market access for INTELSAT absent privatization. They correctly point out that the market opening commitments made by the United States in the World Trade Organization Agreement on Basic Telecommunications Services do not include direct access. In addition, these commenters observe that the Commission's 1997 Order implementing that Agreement expressly provided for stringent analysis of the competitive consequences of direct INTELSAT entry in the U.S. market.

There is little significance to the fact that approximately ninety other administrations have implemented some form of direct access by INTELSAT. In most of those instances, direct access has been used as a device to enable carriers to circumvent a bottleneck in general telecommunications services -- *i.e.*, an administration's Postal, Telegraph, and Telephone ("PTT") monopoly. The situation in the United States has been different from the outset because COMSAT was created to provide an alternative to

what was then the U.S. telecommunications monopoly for accessing what would become INTELSAT. By serving as the non-PTT access conduit of the United States to INTELSAT, COMSAT has for years, in effect, been fulfilling the same purpose that "direct access" to INTELSAT serves for other countries.

The implementation of Level 3 direct access at this time, even if determined to be statutorily permissible, offers little or nothing in the way of "benefits" that could offset the "costs" associated with a delay or mishandling of the INTELSAT privatization issue. In none of the proceedings on direct access stretching back over the last 16 years has it been demonstrated that the institution of a policy of direct access by INTELSAT would lead to a reduction in the charges paid by U.S. end users. It clearly is not sufficient to point, as some carriers do, to the mark-up of COMSAT's charges over the INTELSAT utilization charge as providing "proof" of the existence of these so-called benefits. The Commission's public interest analysis requires more than simplistic, unsubstantiated assertions of potential cost savings -- savings which none of the putative recipients promised to pass along to consumers. This is especially so given the fact that the Commission recognized that there was a shortfall in available meaningful data when it requested COMSAT to provide information on a number of cost items related to COMSAT's Signatory role. Even if allowing INTELSAT directly to access carriers in the United States were to save carriers a few dollars, it would have no tangible positive effect on competition in the marketplace for international telecommunications services.

It is also apparent that direct access to the U.S. market by INTELSAT is not, without more, a catalyst for privatization. Indeed, the opposite may be true. It is the pro-competitive privatization of INTELSAT that is the key to achieving the core policy

objective identified in the *NPRM* -- i.e., enhancement of competition in international telecommunications services. The Commission cannot afford to defocus itself or INTELSAT from the issues of privatization, nor to reduce incentives for INTELSAT to pursue the complex, but important, task of achieving a speedy, meaningful privatization. Lockheed Martin believes that establishment of Level 3 direct access by INTELSAT at this time has the potential to distract the Commission from this critically important task and undermine the ongoing efforts to foster the pro-competitive privatization of INTELSAT.

Finally, deferring further action on direct access at this time would also relieve the Commission of the need to consider the controversial and -- in Lockheed Martin's view -- totally unwarranted calls of long distance carriers for adoption of "fresh look" and capacity "portability." Reopening existing contracts is not appropriate in a competitive environment such as the international satellite service marketplace, where there is competition on all of the high traffic INTELSAT routes into and out of the United States. The related concept of capacity "portability" is simply unworkable because it would improperly inject U.S. policymakers into contractual dealings between INTELSAT and its Signatories and customers in violation of the INTELSAT Agreement.

Lockheed Martin urges the Commission to continue placing the highest priority on constructive efforts to achieve privatization of INTELSAT and to conclude that, on balance, the concession of direct access would be counterproductive to important US national competition and telecommunications policy objectives to be achieved through INTELSAT privatization.

TABLE OF CONTENTS

	<u>Page</u>
SUMMARY	i
TABLE OF CONTENTS	iv
I. The Comments Reinforce the Importance Of The Prompt And Pro-Competitive Privatization of INTELSAT To A Competitive International Satellite Industry.....	3
A. The Commission's Public Interest Analysis Requires More Than Simplistic, Unsubstantiated Assertions Of Potential Cost Savings That Are Not Even Promised To Be Passed Along To End Users.....	6
B. Commenters That Operated International Satellite Systems Recognize The Importance Of Rapid And Pro-Competitive Privatization Of INTELSAT As A Prerequisite To INTELSAT Access To The U.S. Market	7
C. The Commission Should Not Be Swayed By Anecdotal Claims Based On The Fact That Other Countries Allow Level 3 Or Level 4 Direct Access By INTELSAT.....	10
II. The Comments Support Lockheed Martin's Assertion That Establishing Level 3 Direct Access By INTELSAT At This Time Could Seriously Undermine The Process Of Privatizing INTELSAT.....	12
III. With a Decision Not To Establish Level 3 Direct Access by INTELSAT, The Commission Does Not Need To Address The Merits Of The Calls For "Fresh Look" Or The Controversial Associated Concept Of "Portability" ..	14
IV. CONCLUSION	18

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REPLY COMMENTS OF LOCKHEED MARTIN CORPORATION

Lockheed Martin Corporation ("Lockheed Martin"), pursuant to Section 1.415 of the Commission's Rules, hereby submits these reply comments in response to the comments filed on the Commission's Notice of Proposed Rule Making ("*NPRM*") in the above-captioned proceeding.¹

Approximately 20 entities, including Lockheed Martin, filed comments in response to the *NPRM*. With the exception of COMSAT Corporation ("COMSAT"), the U.S. Signatory to the International Telecommunications Satellite Organization ("INTELSAT") whose interest in this proceeding is obvious, the commenters can be loosely categorized into several groups: competitors of COMSAT and/or Lockheed Martin;² foreign telecommunication owners of INTELSAT seeking access to the United States;³ users of INTELSAT capacity;⁴

¹ *Direct Access to the INTELSAT System*, FCC 98-280 (released October 28, 1998 ("*NPRM*"). The deadline for comments was extended to January 29, 1999. See *COMSAT Corporation*, DA 98-2371, slip op. at 1 (International Bureau, released November 23, 1998).

² Included in this group are PanAmSat Corporation ("PanAmSat"), Loral Space & Communications Ltd. ("Loral"), Columbia Communications Corporation ("Columbia"), and GE American Communications, Inc. ("GE Americom"). The latter is a sister corporation of the National Broadcasting Company, Inc.

³ E.g., BT North America, Inc. ("BT") and Cable & Wireless plc ("Cable & Wireless"), both of whom have direct ownership interests in INTELSAT. Also filing in this connection is AmericaTel Corporation ("AmericaTel"), whose ownership includes the Chilean signatory to INTELSAT.

⁴ Commenters in this category include such major telecommunications entities as MCI WorldCom, Inc. ("MCI WorldCom"), AT&T Corporation ("AT&T"), and Sprint Communications Company,

and others.⁵ Although at first reading the commenters appear to support allowing INTELSAT to access directly the U.S. market and users, a number of the commenters express strong concern as to the negative competitive impact that direct access by a non-privatized INTELSAT could have on the U.S. market for international telecommunications services.⁶ Apparently, many of those who express support for direct access nevertheless believe that INTELSAT should first waive its privileges and immunities and other “advantages”⁷ (i.e. privatize) before being allowed to access directly customers in the U.S. market.

It is this last point – and its nexus to the ongoing debate over privatization – that led Lockheed Martin to conclude in its initial comments that establishment of Level 3 direct access by INTELSAT, even if lawful, is contrary to the public interest. As Lockheed Martin explains below, nothing contained in the comments filed by others in this proceeding has persuaded Lockheed Martin to modify its assessment that there are compelling policy and practical reasons

L.P. (“Sprint”), and significant end users of INTELSAT capacity such as ABC, Inc., CBS Corporation, National Broadcasting Company, Inc., and Turner Broadcasting System, Inc. (collectively, “the Networks”).

⁵ In addition to Lockheed Martin, whose unique perspective on the proceeding is established by virtue of the fact that Lockheed Martin has entered into a merger transaction with COMSAT, this group includes Ellipso, Inc. (principal owner of a global mobile-satellite service system).

⁶ See, e.g., Comments of PanAmSat at 7; Columbia Comments at 5 and Attachment (Letter from Charlene Barshefsky, United States Trade Representative-Designate, to Kenneth Gross, President and Chief Operating Officer, Columbia Communications Corp., dated February 12, 1997). Citing “the possible distortive impact on competition in the U.S. satellite services market,” the Barshefsky Letter clarified, *inter alia*, that the United States will not grant market access to a future privatized affiliate, subsidiary or other form of spin-off from INTELSAT that would likely lead to anticompetitive results.

⁷ See, e.g., PanAmSat Comments at 7.

why the Commission should not permit INTELSAT to obtain Level 3 direct access to customers in the U.S. market.⁸ *Lockheed Martin continues to believe that there is no substitute for privatization of INTELSAT as a means of fostering the continuing emergence of a competitive market.*

I. The Comments Reinforce The Importance Of The Prompt And Pro-Competitive Privatization Of INTELSAT To A Competitive International Satellite Industry.

In its Comments, Lockheed Martin took a distinctive stand in this proceeding. Specifically, it expressed the view that the most important element of the *NPRM* is not whether the Commission has statutory authority to implement Level 3 direct access, but whether allowing INTELSAT direct access to the lucrative and robust U.S. market for international telecommunications services would adversely affect either or both the process and timing of privatizing INTELSAT.⁹ Lockheed Martin also emphasized that pro-competitive privatization of INTELSAT is critical to the future competitiveness of the satellite service market. If focused and handled positively, privatization should result in increased capacity for international satellite services being offered at lower prices – the historic stimulus for increased overall demand.¹⁰

⁸ The pendency of new satellite reform legislation weighs heavily in favor of Commission restraint on fundamental issues, such as direct access, that will be addressed in the legislative process.

⁹ Lockheed Martin Comments at 14.

¹⁰ *Id.* at 6-7.

Many of the parties filing comments in this proceeding are chasing dollar signs – real or imagined – and their comments on what Lockheed Martin termed the “monetary” benefits of direct access should be viewed accordingly. Lockheed Martin observed in its own comments that there simply was no support in the record for the existence of monetary benefits.¹¹ Whatever other arguments there are to make, it clearly is not sufficient to point to the mark-up of COMSAT’s charges over the INTELSAT utilization charge as providing “proof” of the existence of these so-called benefits.¹² This is especially so given the fact that the Commission recognized the existence of a shortfall in available meaningful data when it requested COMSAT to provide information on a number of cost items related to COMSAT’s Signatory role.¹³

Those commenters that claim that there are savings to be realized take a narrow, parochial view that starts with the assertion that “COMSAT today charges monopoly rents for access to INTELSAT.” This argument is advanced despite the lack of an explanation of the Signatory-related cost items. Because, in the view of these commenters, the public interest appears to be quantifiable solely in terms of the costs carriers pay for access to INTELSAT, they contend that immediate and across-the-board direct access coupled with the additional requirements of “fresh look” and capacity “portability” is required.¹⁴ Several of them also contend that, because at least

¹¹ *Id.* at 11-12.

¹² *See, e.g.,* Comments of AT&T Corp. at 11-13; Comments of MCI WorldCom, Inc. at 12-13. Both of these commenters have significant experience in carrier rate issues, and it is disingenuous for them to make such over-simplified assertions about another carrier’s rates.

¹³ *NPRM*, FCC 98-280, slip op. at ¶¶ 47-48.

¹⁴ *See, e.g.,* Sprint Comments at 2-3, 6-7, 10-14; Comments of Three Angels Broadcasting Network,

93 other countries afford either Level 3 or Level 4 direct access by INTELSAT, it is high time for the "laggard" U.S. to jump onto the bandwagon and do the same.¹⁵

Both of these assertions are incorrect. The public interest standard that drives the Commission cannot be reduced to an equation that focuses only on the rates U.S. carriers pay for access to INTELSAT capacity in a generally competitive and fully functional marketplace. Moreover, it is overly simplistic to cite merely the statistics on direct access organization-wide and conclude therefrom that U.S. customers are being done a disservice by being "denied" direct access. This proceeding and its underlying public interest connotations are linked not to the private interests of a few INTELSAT customers, but to the overarching considerations that will guide the pro-competitive privatization of INTELSAT in the very near term, and ensure the smooth, distortion-free introduction of the privatized entity into the U.S. marketplace for international telecommunications services. The provision of access to the U.S. market only by an INTELSAT that has been pro-competitively privatized must be the guiding long term public interest force for the Commission's resolution of this proceeding.

Inc., at 2-3. *See also* Comments of AT&T Corp. at 11-13; Comments of MCI WorldCom, Inc. at 12-13.

¹⁵ *See, e.g.,* Comments of MCI WorldCom, Inc. at 10-11.

A. The Commission's Public Interest Analysis Requires More Than Simplistic, Unsubstantiated Assertions Of Potential Cost Savings That Are Not Even Promised To Be Passed Along To End Users.

An overly simplistic and unsubstantiated approach to direct access misses the larger public interest goal of the proceeding. In the *NPRM*, the Commission identified its public interest policy objective as the introduction of competition into markets where competition does not exist and the enhancement of competition where competition does exist.¹⁶ Lockheed Martin fully endorses this objective and so stated in its filing while also arguing that establishment of Level 3 direct access by INTELSAT was, at this critical juncture, not the appropriate means to achieve that objective.¹⁷ Even if allowing INTELSAT directly to access users in the United States were to result in some savings – savings which none of the putative recipients committed to pass along to consumers¹⁸ – it would have no tangible positive effect on competition in the marketplace for international telecommunications services.¹⁹ It would, however, inevitably be a short-term

¹⁶ See *NPRM*, FCC 98-280, slip op. at ¶ 2.

¹⁷ Lockheed Martin Comments at 2, 3-4.

¹⁸ As Lockheed Martin stated would likely be the case in its filing, there is no indication in the filings made by any of the commenting carriers that they would pass through to end users any cost savings (just as was the case with the lowering of accounting rates). In addition, it is useful to emphasize that the commenting carriers here are neither inexperienced nor reticent when it comes to aggressive negotiation of agreements they may be seeking to enter into. Each of these carriers is larger (not by degree, but by orders of magnitude) than COMSAT, and they are the most powerful communications carriers in the most important revenue market in the world – a market that the Commission determined only last year is competitive insofar as COMSAT's role is concerned on the vast majority of INTELSAT routes into and out of the United States. If any entities are capable of entering into arm's length, market-driven accords in a competitive environment, they are AT&T (with its Concert partner, British Telecom), Sprint, and MCI WorldCom.

¹⁹ See Lockheed Martin Comments at 12.

phenomenon that could make INTELSAT and others reluctant to press for the long term objective of pro-competitive privatization.²⁰ The latter is a risk that the U.S. satellite industry and this country cannot afford to take.

B. Commenters That Operate International Satellite Systems Recognize The Importance Of Rapid And Pro-Competitive Privatization Of INTELSAT As A Prerequisite To INTELSAT Access To The U.S. Market.

At first glance, there is a great deal of similarity between many of the viewpoints stated in the comments filed by the major U.S. telecommunications providers (e.g., AT&T and MCI WorldCom) on the one hand, and certain large U.S. operators of international satellite systems (e.g., PanAmSat, Loral, Columbia, and GE Americom) on the other. In each case, support is stated for the Commission's authority to implement Level 3 direct access, and for the proposition that lower costs would be realized.²¹

At a fundamental level, however, there is a dramatic point of departure between the satellite operators and the carriers. For the carriers, the analysis seems to end with the unsubstantiated notion that direct access will save them money, and an entreaty to have the Commission impose not only direct access, but the ancillary features of "fresh look" and a new suggestion by the carriers called "portability."

²⁰ *Id.* at 7-8.

²¹ *See, e.g.,* Comments of GE Americom at 3-7, 8-10; Comments of Loral at 1-2, 6-7; Comments of Sprint at 2-6, 6-9.

To varying degrees, and notwithstanding their rhetoric on direct access, each of the international satellite operators underscores what was the central tenet of Lockheed Martin's filing – i.e., whatever else direct access may be or do, it cannot be permitted to undermine the efforts to privatize INTELSAT. For example, GE Americom states that “[p]ermitting INTELSAT access to the U.S. market before privatization takes place will give INTELSAT an undue competitive advantage in the marketplace for such services and irreparably harm competitive carriers.”²² GE Americom goes on to assert that “INTELSAT should be barred from accessing the U.S. domestic market until a pro-competitive privatization is completed.”²³ PanAmSat and Columbia both recognize the importance of conducting an analysis of the competitive consequences of market entry before INTELSAT is permitted to operate in the United States.²⁴ Loral, for its part, calls upon the Commission to harmonize its actions on direct access with Congress' ongoing deliberations on privatization.²⁵

²² GE Americom Comments at 13-14.

²³ *Id.* at 14.

²⁴ See Columbia Comments at 4-5; PanAmSat Comments at 7-8. Curiously, PanAmSat seems to believe that the Commission already possesses the power to impose privatization as a condition of INTELSAT's access to the U.S. market, specifically urging reliance by the Commission on the provisions of the legislation known as the Foreign Corrupt Practices Act. *Id.* at 7 & n.15. Although Lockheed Martin does not share PanAmSat's conviction as to the significance of the cited legislation on either the Commission's role or the specific conditions PanAmSat proposes, it is sufficient to note that, at its root, PanAmSat's belief appears to be that an INTELSAT that is not pro-competitively privatized should not be allowed access to the U.S. market.

²⁵ Loral Comments at 9. In contrast with PanAmSat, Loral seems to be of the view that at least some form of Congressional action is necessary in order for the privatization of INTELSAT to be completed. From a substantive standpoint, the nexus between privatization and direct access is established.

PanAmSat lays out its proposed blueprint for the Commission's privatization of INTELSAT. Among the conditions sought by PanAmSat are a requirement that INTELSAT pay application and regulatory fees and vie for orbital locations on the same terms and conditions as its competitors; close scrutiny of INTELSAT tariffs to ensure they are non-discriminatory and cost-based; strict enforcement of the Commission's "no concessions" policy; and compliance with all requirements of Titles II and III of the Communications Act.²⁶

When the comments are stripped of rhetoric and expressions of self interest, there is only one thought that survives. This thought is articulated most clearly in the comments filed by Columbia. It emphasizes and expresses serious concern that Level 3 direct access would provide INTELSAT and its non-U.S. Signatories with ready end-to-end access to the U.S. market,²⁷ and would do so without requiring any commitments, new conditions, or concessions on INTELSAT's part and without undergoing any of the scrutiny that is contemplated in the Commission's 1997 decision implementing the market opening commitments the United States made in the World Trade Organization Agreement on Basic Telecommunications Services.²⁸

²⁶ PanAmSat Comments at 8.

²⁷ The access that INTELSAT would get could exceed the access that U.S. operators have due to the restrictions the Commission imposes on fixed-satellite service providers that would not be applicable to INTELSAT.

²⁸ *See Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Space Stations to Provide Domestic and International Satellite Services in the United States*, 12 FCC Rcd 24094, 24154-55 (1997). In this decision, the Commission stated that the United States would not permit market access to a future privatized affiliate, subsidiary, or other form of spin-off from an intergovernmental organization (e.g., INTELSAT) that could lead to anticompetitive results.

The idea that INTELSAT may be given such access without undergoing a pro-competitive privatization (e.g., elimination of privileges and immunities and other treaty-based advantages) is at the heart of the concerns being expressed in the comments the satellite operators have filed. As several commenters suggest, INTELSAT should be required to make an affirmative demonstration that its entry into the U.S. market as a provider of services to end users will have no adverse impact on competition. Direct access does not do this. Regardless of whether one believes that Level 3 direct access is a good thing in absolute terms, and even if one were to accept the proposition that the Commission has the legal authority under the Communications Satellite Act of 1962 and the Communications Act, the Commission should not adopt a market access arrangement that is contrary to the specific exclusion the United States sought and achieved in the WTO process.

C. The Commission Should Not Be Swayed By Anecdotal Claims Based On The Fact That Other Countries Allow Level 3 Or Level 4 Direct Access By INTELSAT.

One of the more repeated contentions in the comments filed in response to the *NPRM* is that the Commission should implement direct access in the United States because at least 93 other countries allow direct access to their carriers by INTELSAT.²⁹ As Lockheed Martin noted in its initial comments, however, there is little significance to the fact that 93 or 94 other countries have implemented some form of direct access by INTELSAT to their national markets. This is because

²⁹ See, e.g., Comments of MCI WorldCom, Inc. at 10-11; Comments of Sprint Communications Company, L.P. at 10 (criticizing the U.S. for being "more of a laggard than a pioneer" because it is

in most of those instances, direct access is a device that enables a country to circumvent what often was a bottleneck in general telecommunications services – *i.e.*, the administration's Postal, Telegraph, and Telephone ("PTT") monopoly. This is not and never has been the situation in the United States.³⁰

COMSAT was created by Congress in 1962 to perform precisely the role in the United States that direct access made available elsewhere only much later. Specifically, COMSAT was set up in the Satellite Act to provide an alternative to AT&T – then the U.S. telecommunications monopoly – for accessing what would become INTELSAT. By serving as the non-PTT access conduit of the United States to INTELSAT, COMSAT has, in effect, been providing for "direct access" to INTELSAT from the very beginning – a fact that demonstrates forward-looking U.S. leadership on this issue. For this reason, the existence of direct access to INTELSAT in other countries has no relevance to the U.S. policy objectives.³¹

not one of the 93 countries permitting INTELSAT direct access);

³⁰ Lockheed Martin Comments at 10.

³¹ In any event, the mere fact that a country permits direct access by INTELSAT is not meaningful without a showing that the direct access that is afforded in that country is truly open to all desirous participants. For example, if there is a limitation on the number of non-Signatory carriers that can access INTELSAT under a particular country's direct access scheme, direct access to INTELSAT would not necessarily be an improvement in the competitive situation in that country. Another consideration at play here may be the fact that in many countries where the INTELSAT Signatory is a fully-integrated telecommunications services provider, cross-subsidies are an accepted way of doing business. Such largess has never been available to COMSAT, which, as noted, was created for a very different purpose. Rather than target COMSAT for a reformation scheme that punishes the company for serving well the purpose for which it was created, it seems that the best long- and short-term solution would be to reform INTELSAT into a private corporation that would be investor-run on the same terms and conditions as any other commercial company.

II. The Comments Support Lockheed Martin's Assertion That Establishing Level 3 Direct Access By INTELSAT At This Time Could Seriously Undermine The Process Of Privatizing INTELSAT.

In its Comments, Lockheed Martin showed that, if the Commission were to adopt a policy allowing Level 3 direct access by INTELSAT, it could have a deleterious impact on the ongoing efforts to complete the pro-competitive privatization of INTELSAT.³² Among other things, Lockheed is concerned about the prospect that key foreign Signatories could view direct access as a substitute for privatization, and thus divert the focus from the critical task of privatizing INTELSAT as quickly as possible and in a pro-competitive manner. Lockheed Martin is also concerned about the potential for direct access to "defocus" policymakers and lawmakers. It recognized in this last regard that, while many of the key participants in the privatization discussions share the same general objective, it is not clear that there is a consensus on how to get INTELSAT from where it is today to where it would need to be in order to achieve the U.S. goal of avoiding competitive distortions in the international marketplace.³³

Several of the commenters validate the concerns Lockheed Martin expressed. For example, BT North America devoted its entire comments to an attempt to have the Commission implement both Level 3 and *Level 4* direct access to the United States.³⁴ It is, of course, no

³² Lockheed Martin Comments at 13-15.

³³ *Id.* at 15.

³⁴ See Comments of BT North America.

surprise that foreign entities with Level 4 direct access – *i.e.*, foreign entities with a capital investment in INTELSAT – would express strong support for a policy that affords INTELSAT unrestricted access to the U.S. market.³⁵ What Lockheed Martin finds distressing is BT's assertion that "[t]he only truly competitive access market in the U.S. will be one which allows Level 4 access."³⁶ This suggests that if direct access by INTELSAT is secured through this proceeding, at least some of those with a capital stake in the organization will have achieved their primary objective and will no longer have an incentive to pursue privatization. Lockheed Martin reiterates that direct access is no substitute for privatization. If the entry of INTELSAT into the U.S. market did not pose policy and competitive concerns, there would be no reason for the U.S. Government to pursue privatization in the first place.

Again, for reasons that Lockheed Martin provided in its initial comments, and for the reasons that other U.S. international satellite system operators provided, the Commission should take no action here that reduces the incentives for key participants to participate meaningfully in the privatization process and see it through to a rapid completion or that takes focus away from the crucial privatization debate. It appears that there is reason to be concerned that the grant of direct access by INTELSAT would indeed have a negative impact on the privatization debate.

³⁵ In addition to BT, commenters that fall into this category include Cable & Wireless (which has Level 4 direct access through the United Kingdom (*see* Cable & Wireless Comments at 2)) and AmericaTel (which is owned by the Chilean Signatory to INTELSAT).

³⁶ BT Comments at 17.

III. With A Decision Not To Establish Level 3 Direct Access By INTELSAT, The Commission Does Not Need To Address The Merits Of The Calls For "Fresh Look" Or The Controversial Associated Concept Of "Portability."

There can be no question but that the pro-competitive privatization of INTELSAT, with its concomitant benefits to the U.S. consumer, has to remain the Commission's paramount policy concern. This was the thesis of Lockheed Martin's comments and is a theme that is reflected in all of the credible comments that have been filed in response to the *NPRM*. The Commission should not pursue the establishment of direct access, even if it has the authority to do so, but rather should use the record developed in this proceeding to refine further U.S. objectives with respect to INTELSAT's privatization and to identify the appropriate way for the U.S. to encourage INTELSAT to bring the process of privatization to a satisfactory and timely conclusion.³⁷

A Commission determination not to pursue direct access is supported by several important considerations in addition to those directly related to privatization. First, there is a strong indication that direct access by INTELSAT to the United States would be in place only for a short time.³⁸ The regulatory concept of "direct access" has no role after privatization. It will be the business decision of the privatized INTELSAT what service providers/distributors to use nationally or regionally. The Commission is being asked to make a tremendous undertaking with

³⁷ Lockheed Martin Comments at 16. Lockheed Martin reiterates a point made in its earlier comments that it does not concede that the Commission possesses the legal authority to establish direct access. Lockheed Martin has not addressed this point as Lockheed Martin believes that the Commission should not establish direct access even if it can.

³⁸ *Id.* at 7-8.

many difficult legal and policy calls for what will inevitably be a very short-lived or questionable policy.

Second, Lockheed Martin points out that if the Commission were to follow Lockheed Martin's proposal and not pursue direct access, it need not even address the problematic, controversial, potentially unconstitutional and – in Lockheed Martin's view – totally unwarranted calls for adoption of “fresh look” and the associated “portability” concept that the long distance carriers have made.³⁹ Both requests are ancillary to direct access, and thus have no relevance if direct access is not implemented.

Beyond that, Lockheed Martin is of the view that fresh look (even if limited to the manner in which the Commission has used this policy over the years) is inappropriate in a competitive environment such as the international satellite service marketplace, where there is competition on all of the significant INTELSAT routes into and out of the United States.⁴⁰ Indeed, in the *Expanded Interconnection* proceeding (which the commenters advocating fresh look rely upon for support), the Commission made clear that fresh look was appropriate only where customers lacked competitive alternatives when they entered into deals, and thus required relief from their long-term obligations in order to be able to benefit from competition.⁴¹ In the case of

³⁹ See, e.g., Comments of MCI WorldCom at 25-30 (requesting both fresh look and portability); Comments of Sprint at 10-14 (same); Comments of AT&T at 13-15 (requesting fresh look only).

⁴⁰ See COMSAT Corporation Petition Pursuant to Section 10(c) of the Communications Act of 1934, as Amended, for Forbearance from Dominant Carrier Regulation and for Reclassification as a Non-Dominant Carrier, 13 FCC Rcd 14083 (1998).

⁴¹ See *Expanded Interconnection With Local Telephone Company Facilities*, Second Memorandum Opinion and Order on Reconsideration, 8 FCC Rcd 7341, 7346 (1993). See also Amendment of

international communications circuits, competitive alternatives to INTELSAT have been available to users of such capacity for many years, and these users (particularly including the major carriers) have entered into alternative arrangements with fiber optic submarine cable operators as well as other space segment providers.⁴² Therefore, opening up existing COMSAT contracts for a "fresh look" would be unwarranted.

The presence of competitive alternatives in the international satellite service marketplace also undermines the commenters' reliance on the *800 Number Portability* proceeding⁴³ for support of the use of fresh look. There, the Commission required AT&T to permit customers with Tariff 12 packages that included inbound service to terminate those packages in order to "... ensure that customers who may be *dependent* on a specific 800 number cannot be leveraged by AT&T into long-term commitments."⁴⁴ In other words, fresh look was appropriate in that limited instance because of the customers' vested interest in their unique 800 numbers. In contrast to individualized 800 numbers, international satellite capacity is fungible. Finally, because no user of international satellite capacity is dependent upon COMSAT for such capacity,

the Commission's Rules Relative to Allocation of the 849-851/894-896 MHz Bands, Memorandum Opinion and Order, 6 FCC Rcd 4582, 4583-84 (1991) (permitting airlines to terminate without penalty contracts for air-ground service entered into with GTE because GTE had a de facto monopoly on air-ground service).

⁴² Lockheed Martin again observes that the principal proponents of fresh look are the three largest U.S. carriers. These companies are not known for entering into agreements that are unfavorable to them and each one is much larger than COMSAT.

⁴³ Competition in the Interstate Interexchange Marketplace, Report and Order, 6 FCC Rcd 5880 (1991).

⁴⁴ Id. at 5906 (emphasis added).

there can be no justification to implement a fresh look period for the abrogation of the commitments between COMSAT and its INTELSAT space segment customers.

Similarly, the related concept of INTELSAT capacity "portability" is unworkable, as it would improperly inject U.S. policy makers into contractual dealings between INTELSAT and its Signatories and customers, in violation of the INTELSAT Agreement. Specifically, Article X of that Agreement affords to the Board of Governors of INTELSAT the power to adopt "terms and conditions governing the allotment of INTELSAT space segment capacity, in accordance with such general rules as may have been established by the Meeting of Signatories."⁴⁵ While INTELSAT has established procedures for direct access by non-Signatories, nowhere in these procedures are applicants for direct access permitted to step into the shoes of Signatories and assume a right to their capacity allotments. Rather, each customer must seek to secure its own access to space segment through INTELSAT under its Service Agreement.⁴⁶ No agency of the U.S. Government has the right to interfere with these contractual arrangements with the treaty-based satellite organization.

⁴⁵ See INTELSAT Agreement, TIAS 7532, Article X(a)(vii).

⁴⁶ INTELSAT's standard Service Agreement states that each customer "understands and agrees that this Agreement does not constitute any commitment or promise, express or implied, on the part of INTELSAT that Customer will be allotted any capacity in the INTELSAT space segment." See INTELSAT Service Agreement at Section 2 (available at <http://www.intelsat.com/cmc/connect/servform.htm>).

IV. CONCLUSION

For all of the reasons Lockheed Martin provided in its initial Comments and above, and without regard to whether it has authority to do so under existing legislation, the Commission should decline to establish a policy of direct access by INTELSAT to the United States in this proceeding.

The completion of a rapid and pro-competitive privatization of INTELSAT is essential to the future growth of the international satellite services marketplace and for assurance that U.S. interests, which have nurtured and developed and led the industry for the last 30 years, have every opportunity to maintain those leadership roles. When viewed in the larger context of INTELSAT's role in a rapidly-evolving and globalizing satellite industry, direct access by INTELSAT to the United States market is the wrong approach, and must thus be deemed inconsistent with the public interest.

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